



\$~

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**Reserved on: 10<sup>th</sup> February, 2026**  
**Pronounced on: 25<sup>th</sup> February, 2026**

+ CS(OS) 212/2018 & I.A. 6268/2018, I.A. 4444/2023, I.A. 6973/2023,  
I.A. 11225/2024

RAJIVE SAWHNEY &amp; ANR.

.....Plaintiffs

Through: Mr. Viraj R. Datar, Senior Advocate  
with Mr. Imran Moulaley and Mr.  
Srikant Singh, Advocate.  
Mob: 9990091359  
Email: [imranmoulaley@gmail.com](mailto:imranmoulaley@gmail.com)

versus

DEVIKA MEHRA

.....Defendant

Through: Mr. Rajesh Mohan  
Sinha, Mr. Prateek Mohan Sinha, Dr.  
Gaurav Manuja, and Mr. Krishnendu  
Das, Advocates for the applicant.  
Mob: 9582156789  
Email: [drguravmanuja@yahoo.com](mailto:drguravmanuja@yahoo.com)  
Mr. Rajat Aneja and Mr. Anant  
Chaitanya Dutta, Advs. for Defendant  
Mob: 9810727771  
Email: [raneja@anejaandaneja.com](mailto:raneja@anejaandaneja.com)

**CORAM:**  
**HON'BLE MS. JUSTICE MINI PUSHKARNA**

**JUDGMENT****MINI PUSHKARNA, J.****I.A. 11225/2024**

1. The present application has been filed under Order I Rule 1, 8(A), 10



and 10(A) read with Section 151 of Code of Civil Procedure, 1908 (“CPC”) on behalf of Mr. Atul Malik, Mrs. Geetika Malik, Mr. Satender Malik and Mrs. Anuroop Malik, praying for their impleadment in the present suit.

2. The applicants have prayed for their impleadment in the present suit on the ground that the plaintiffs entered into an Agreement to Sell dated 06<sup>th</sup> October, 2017 with the applicants with respect to the property, i.e., *agricultural farm land, admeasuring 2.5 acres, bearing Khasra Nos. 744, 745, 747 and 748 known as Farm No. 26, Shivji Marg, Westend Greens, Village Rangpuri, New Delhi* (“suit property”), pursuant to which, the possession of the suit property has been handed over to the applicants *vide* Possession Letter dated 24<sup>th</sup> March, 2018. Thus, as per the applicants they are proper and necessary parties in the present suit, since any decision in the present suit will have impact on the right and title of the applicants in the suit property.

3. The present application has been vehemently opposed by the plaintiffs as well as the defendant on the ground that the plaintiffs have not claimed any relief against the applicants in the present suit, and the applicants have no privity of contract in the purported Agreements to Sell executed by the defendant’s mother in favour of the plaintiffs. Further, impleadment of the applicants shall enlarge the scope of the suit, as the Court would have to adjudicate two independent causes of actions, one between the plaintiffs and the defendant, and the other between the plaintiffs and the applicants.

4. Having heard learned counsels for the parties and having perused the record, at the outset, this Court notes that the present suit has been filed by the plaintiffs seeking decree of declaration that the plaintiffs are the owners in possession of the suit property.



5. As per the plaint, the plaintiffs were good friends with the parents of the defendant. The defendant's mother, late Mrs. Veena Mehra, was the owner of the suit property, and she executed three Agreements to Sell dated 12<sup>th</sup> December, 1990, 20<sup>th</sup> December, 1990 and 01<sup>st</sup> November, 1991, in favour of the plaintiffs. Payment of the entire sale consideration was made by the plaintiffs to late Mrs. Veena Mehra, mother of the defendant. Further, possession of the suit property was also handed over to the plaintiffs.

6. The plaintiffs assert that they have been in an uninterrupted exclusive physical possession of the suit property. However, the Sale Deed was still to be executed by late Mrs. Veena Mehra in favour of the plaintiffs. Unfortunately, late Mrs. Veena Mehra, along with her husband and youngest of the three daughters died in an unfortunate helicopter accident on 02<sup>nd</sup> January, 2000. On their deaths, they were survived by two other daughters, namely, the defendant herein and her elder sister Ms. Amita Mehra.

7. Subsequently, the suit property came to the share of the defendant, after the division of the estate of the parents of the defendant with her elder sister. The plaintiffs requested the defendant on various occasions to execute registered Sale Deed in favour of the plaintiffs. However, upon the defendant's outright refusal to execute the Sale Deed, by claiming ownership of the suit property, the present suit came to be filed.

8. As per the plaint, the plaintiffs have lost their files with all their sets of documents relating to the transaction of sale in their favour, with respect to the suit property.

9. The present suit is being resisted by the defendant on the ground that after the demise of the defendant's parents, using the defendant's absence from India, the plaintiffs appear to have fabricated documents regarding the



suit property. The plaintiffs do not have any original documents regarding the suit property, including, the Agreement to Sell and the proof of payment of sale consideration.

10. Perusal of the factual assertions made on behalf of the plaintiffs and the defendant, manifests that the plaintiffs and the defendant have a dispute regarding the ownership of the suit property, wherein, the plaintiffs claim ownership on the basis of Agreements to Sell purportedly executed by the mother of the defendant in favour of the plaintiffs, which assertion is refuted by the defendant. Thus, it is clear that the title of the plaintiff *qua* the suit property is the subject matter of adjudication in the present suit.

11. *Per contra*, the applicants claim their right over the suit property on the basis of Agreement to Sell dated 06<sup>th</sup> October, 2017 between the plaintiffs and the applicants, wherein, the applicants claim that the plaintiffs sold the suit property to the applicants *vide* the aforesaid Agreement to Sell for a total consideration of Rs. 60,00,00,000/- (Rupees Sixty Crores Only). As per the applicants *vide* Possession Letter dated 24<sup>th</sup> March, 2018, the plaintiffs have handed over the vacant, physical and peaceful possession of the entire suit property to the applicants.

12. The applicants further rely upon a Memorandum of Understanding (“MoU”) dated 02<sup>nd</sup> March, 2021, executed by the plaintiffs, thereby, confirming the Agreement to Sell dated 06<sup>th</sup> October, 2017 entered between the applicants and the plaintiffs. Further, the said MoU was extended till 02<sup>nd</sup> March, 2025, *vide* Extension Letter dated 02<sup>nd</sup> March, 2023.

13. It is to be noted that there are disputes between the plaintiffs and the applicants, pursuant to which, the applicants filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996 (“Arbitration Act”) bearing



*No. OMP(I)(COMM) 430/2023*, on the ground that the plaintiffs sought to dispossess the applicants and create third-party rights in the suit property. *Vide* order dated 22<sup>nd</sup> December, 2023 in the said petition, statement on behalf of the plaintiffs herein was recorded that the applicants shall not be dispossessed, without following the due process of law.

14. It is also to be noted that the plaintiffs, thereafter, *vide* letter dated 05<sup>th</sup> January, 2024, terminated the MoU dated 02<sup>nd</sup> March, 2021.

15. It is the case of the applicants that they have already paid a sum of Rs. 38.5 Crores to the plaintiffs, leaving a balance sale consideration amounting to Rs. 21.5 Crores, and the amount paid has not been returned by the plaintiffs.

16. Accordingly, it is indisputable that there are disputes between the plaintiffs and the applicants with regard to the suit property, wherein the plaintiffs, on the basis of purported Agreements to Sell in their favour executed by mother of the defendant, have further entered into an Agreement to Sell and MoU with the applicants, with respect to the suit property.

17. Considering the aforesaid factual position, it is apparent that there are disputes between the plaintiffs and the defendant on the one hand regarding title and ownership of the suit property and on the other hand, there are disputes between the plaintiffs and the applicants regarding the title and ownership of the suit property. The two set of facts are independent causes of action as regards the disputes between the plaintiffs and the defendant on one hand, and disputes between the plaintiffs and applicants on the other hand. Therefore, if the applicants were to be impleaded, the same would expand the scope of the suit and two independent and diametrically



distinctive causes of action would be joined, which cannot be allowed.

18. This Court would not adjudicate two independent and distinct causes of action, one between the plaintiffs and defendant, and second between the plaintiffs and the applicants in the present suit. The disputes, which have arisen between the applicants and the plaintiffs, would be subject matter of separate proceedings and the same would not be adjudicated in the present proceedings, wherein, the Court is concerned with the adjudication of the issue pertaining to right and title of the plaintiffs *qua* the suit property, as against the defendant. The applicants do not have direct interest in the controversy involved in the suit, as the applicants derive their interest from the plaintiffs, whereas, in the present suit, the plaintiffs are seeking to establish their interest/title in the suit property as against the defendant. Needless to state, the applicants cannot have a better title in the suit property than the plaintiffs, as they seek to derive their interest in the suit property from the plaintiffs.

19. Thus, holding that in a suit, the *lis* between the vendor and the persons in whose favour agreement to sell is executed shall only be gone into and it is not open for the Court to decide whether any other parties have acquired any title and possession of the contracted property, Supreme Court in the case of *Gurmit Singh Bhatia Versus Kiran Kant Robinson and Others*, (2020) 13 SCC 773, held as follows:

“xxx xxx xxx

*5.2. An identical question came to be considered before this Court in Kasturi [Kasturi v. Iyyamperumal, (2005) 6 SCC 733] and applying the principle that the plaintiff is the dominus litis, in the similar facts and circumstances of the case, this Court observed and held that the question of jurisdiction of the court to invoke Order 1 Rule 10 CPC to add a party who is not made a party in the suit by the plaintiff shall not arise unless a party proposed to be added has direct and legal interest in the*



controversy involved in the suit. It is further observed and held by this Court that two tests are to be satisfied for determining the question as to who is a necessary party. The tests are : (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party. It is further observed and held that in a suit for specific performance the first test that can be formulated is, to determine whether a party is a necessary party there must be a right to the same relief against the party claiming to be a necessary party, relating to the same subject-matter involved in the proceedings for specific performance of contract to sell. It is further observed and held by this Court that in a suit for specific performance of the contract, a proper party is a party whose presence is necessary to adjudicate the controversy involved in the suit. It is further observed and held that the parties claiming an independent title and possession adverse to the title of the vendor and not on the basis of the contract, are not proper parties and if such party is impleaded in the suit, the scope of the suit for specific performance shall be enlarged to a suit for title and possession, which is impermissible. It is further observed and held that a third party or a stranger cannot be added in a suit for specific performance, merely in order to find out who is in possession of the contracted property or to avoid multiplicity of the suits. It is further observed and held by this Court that a third party or a stranger to a contract cannot be added so as to convert a suit of one character into a suit of different character.

xxx xxx xxx

5.4. In the aforesaid decision in *Kasturi* [*Kasturi v. Iyyamperumal*, (2005) 6 SCC 733], it was contended on behalf of the third parties that they are in possession of the suit property on the basis of their independent title to the same and as the plaintiff had also claimed the relief of possession in the plaint and the issue with regard to possession is common to the parties including the third parties, and therefore, the same can be settled in the suit itself. It was further submitted on behalf of the third parties that to avoid the multiplicity of the suits, it would be appropriate to join them as party defendants. This Court did not accept the aforesaid submission by observing that merely in order to find out who is in possession of the contracted property, a third party or a stranger to the contract cannot be added in a suit for specific performance of the contract to sell because they are not necessary parties as there was no semblance of right to some relief against the party to the contract. It is further observed and held that in a suit for specific performance of the contract to sell the lis between the vendor and the persons in whose favour agreement to sell is executed shall only be gone into and it is also not open to the Court to decide whether



any other parties have acquired any title and possession of the contracted property.

5.5. It is further observed and held by this Court in Kasturi [Kasturi v. Iyyamperumal, (2005) 6 SCC 733] that if the plaintiff who has filed a suit for specific performance of the contract to sell, even after receiving the notice of claim of title and possession by other persons (not parties to the suit and even not parties to the agreement to sell for which a decree for specific performance is sought) does not want to join them in the pending suit, it is always done at the risk of the plaintiff because he cannot be forced to join the third parties as party defendants in such suit. The aforesaid observations are made by this Court considering the principle that the plaintiff is the dominus litis and cannot be forced to add parties against whom he does not want to fight unless there is a compulsion of the rule of law.

5.6. Therefore, considering the decision of this Court in Kasturi [Kasturi v. Iyyamperumal, (2005) 6 SCC 733], the appellant cannot be impleaded as a defendant in the suit filed by the original plaintiffs for specific performance of the contract between the original plaintiffs and original Defendant 1 and in a suit for specific performance of the contract to which the appellant is not a party and that too against the wish of the plaintiffs. The plaintiffs cannot be forced to add party against whom he does not want to fight. If he does so, in that case, it will be at the risk of the plaintiffs.

xxx xxx xxx”

(Emphasis Supplied)

20. Similarly, the Supreme Court in the case of *Nak Engineering Company Pvt. Ltd. Versus Tarun Keshrichand Shah and Others*, 2026 SCC OnLine SC 4, held that the plaintiffs in the suit are *dominus litis* and it is for them to choose their adversaries. The plaintiffs cannot be compelled to add any party to defend a suit against their wishes. It was held that a decree, if any, passed in the suit, would be binding only between the parties to the suit and would not infringe upon any right of a third party. Thus, delving on the aspect of what are necessary and proper parties in a suit, Supreme Court in the aforesaid case held as follows:



“xxx xxx xxx

33. The fundamental distinction between a “necessary party” and a “proper party” was succinctly explained in *Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay*<sup>5</sup>, wherein this Court held:

**“6... A necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.”**

34. In *Kasturi v. Iyyamperumal*<sup>6</sup>, this Court crystallized the twin tests for a necessary party:

**“...the question of jurisdiction of the court to invoke Order 1 Rule 10 CPC to add a party who is not made a party in the suit by the plaintiff shall not arise unless a party proposed to be added has direct and legal interest in the controversy involved in the suit. ... two tests are to be satisfied for determining the question as to who is a necessary party. The tests are : (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party.”**

35. This principle has been consistently reiterated. In *Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd.*<sup>7</sup>, this Court reiterated:

**“15. A “necessary party” is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a “necessary party” is not impleaded, the suit itself is liable to be dismissed. A “proper party” is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.”**

36. Thereafter, in *Vidur Impex & Traders (P) Ltd. v. Tosh Apartments (P) Ltd.*, the broad principles governing impleadment were summarized:



“41.2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the court.

41.3. A proper party is a person whose presence would enable the court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

**41.4. If a person is not found to be a proper or necessary party, the court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.”**

xxx xxx xxx

**39. This apart, the respondent Nos. 1 and 2 who have instituted the suit are dominus litis and it is for them to choose their adversaries. If they do not array the proper and necessary parties to the suit, they do it at their own risk. However, they cannot be compelled to add a party to defend a suit against their wishes. The decree, if any, passed in the suit would be binding only between the parties to the suit and would not infringe upon any right of a third party, much less of the appellant that is not a party to the suit.**

40. This conclusion is reinforced by the fundamental principle laid down in *Kanaklata Das v. Naba Kumar Das*, wherein this Court has observed:

**“11.4. ...the plaintiff being a dominus litis cannot be compelled to make any third person a party to the suit, be that a plaintiff or the defendant, against his wish unless such person is able to prove that he is a necessary party to the suit and without his presence, the suit cannot proceed and nor can be decided effectively. In other words, no person can compel the plaintiff to allow such person to become the co-plaintiff or defendant in the suit. It is more so when such person is unable to show as to how he is a necessary or proper party to the suit and how without his presence, the suit can neither proceed and nor it can be decided or how his presence is necessary for the effective decision of the suit.**

11.5. ... a necessary party is one without whom, no order can be made effectively, a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.”

xxx xxx xxx”

(Emphasis Supplied)



21. The judgment in the case of *Sumtibai and Others Versus Paras Finance Co., (2007) 10 SCC 82*, relied by the applicants is clearly distinguishable and not applicable to the facts and circumstances of the present case. In the said case, a suit for specific performance had been filed against one Kapoor Chand. After his death, the Legal Representatives (“LRs”) of the said Kapoor Chand were brought on record, who sought to file an additional written statement, which was rejected by the Trial Court, and which decision was subsequently upheld by the High Court. In appeal, the Supreme Court allowed the LR of aforesaid Kapoor Chand to file additional written statement on the ground that the shop in the said case was not only sold to Kapoor Chand, but also his sons. Thus, it was held that the sons of Kapoor Chand cannot be said to have no semblance of title, and they were *prima facie* held to be co-owners of the property in dispute in the said case. Thus, it was held that LR of Kapoor Chand had a right to take defence by way of filing an additional written statement and adduce evidence in the suit. It was in this context and in the facts and circumstances of the said case that the Supreme Court held that a third party who could show a fair semblance of title or interest in the property, could be impleaded in a suit involving dispute *qua* a property between two parties.

22. However, the facts and circumstances of the present case are clearly distinguishable and the judgment in the case of *Sumtibai (Supra)*, as relied upon by the applicants, does not apply to the present case. As noted above, in the present case, the cause of action with regard to the disputes between the plaintiffs and defendant on the one hand and plaintiffs and applicants on the other hand, are distinct and would have to be adjudicated separately and independently.



23. In this regard reference may also be made to the judgment in the case of *Mumbai International Airport Private Limited Versus Regency Convention Centre and Hotels Private Limited and Others*, (2010) 7 SCC 417, wherein, the Supreme Court while distinguishing the judgment in the case of *Sumtibai (Supra)*, held as follows:

“xxx xxx xxx

**20. The first respondent contended that Kasturi [(2005) 6 SCC 733] held that a person claiming a title adverse to the title of defendant vendor, could not be impleaded, but the effect of Sumtibai [(2007) 10 SCC 82] would be that such a person could be impleaded; and that therefore, the decision in Sumtibai [(2007) 10 SCC 82] is contrary to the larger Bench decision in Kasturi [(2005) 6 SCC 733].**

**21. On a careful consideration, we find that there is no conflict between the two decisions. The two decisions were dealing with different situations requiring application of different facets of sub-rule (2) of Rule 10 of Order 1. This is made clear in Sumtibai [(2007) 10 SCC 82] itself. It was observed that every judgment must be governed and qualified by the particular facts of the case in which such expressions are to be found; that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision and that even a single significant detail may alter the entire aspect; that there is always peril in treating the words of a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case. The decisions in Ramesh Hirachand Kundanmal v. Municipal Corpn. of Greater Bombay [(1992) 2 SCC 524] and Anil Kumar Singh v. Shivnath Mishra [(1995) 3 SCC 147] also explain in what circumstances persons may be added as parties.**

xxx xxx xxx

**25. In other words, the court has the discretion to either to allow or reject an application of a person claiming to be a proper party, depending upon the facts and circumstances and no person has a right to insist that he should be impleaded as a party, merely because he is a proper party.**

**26. If the principles relating to impleadment are kept in view, then the purported divergence in the two decisions will be found to be non-existent. The observations in Kasturi [(2005) 6 SCC 733]**



**and Sumtibai [(2007) 10 SCC 82] are with reference to the facts and circumstances of the respective cases. In Kasturi [(2005) 6 SCC 733] this Court held that in suits for specific performance, only the parties to the contract or any legal representative of a party to the contract, or a transferee from a party to the contract are necessary parties. In Sumtibai [(2007) 10 SCC 82] this Court held that a person having semblance of a title can be considered as a proper party. Sumtibai [(2007) 10 SCC 82] did not lay down any proposition that anyone claiming to have any semblance of title is a necessary party. Nor did Kasturi [(2005) 6 SCC 733] lay down that no one, other than the parties to the contract and their legal representatives/transferees, can be impleaded even as a proper party.**

xxx xxx xxx”

(Emphasis Supplied)

24. Considering the detailed discussion hereinabove, it is evident that the plaintiffs have not claimed any relief against the applicants in the present matter. The applicants have no direct and legal interest in the controversy involved in the present suit. The present suit pertains to the claim of the plaintiffs over the suit property, on the basis of three Agreements to Sell in their favour, purportedly executed by the mother of the defendant. The applicants are not privy to the said purported Agreements to Sell. Any right asserted by the applicants against the plaintiffs, constitutes a distinct cause of action, requiring separate legal proceedings.

25. In the present case, this Court would adjudicate upon the rights of the plaintiffs over the suit property, and any claim which the applicants raise against the plaintiffs, cannot be adjudicated in the present proceedings by enlarging the scope of the suit and by joining two distinct causes of action. Any transaction that the applicants have had with the plaintiffs, are independent in nature. The rights under adjudication in the present suit are absolutely independent of the rights so propounded by the applicants. The applicants are clearly not necessary and proper parties in the present suit.



2026:DHC:1676



26. No merit is found in the present application. The same is accordingly dismissed.

**CS(OS) 212/2018**

27. List before the Joint Registrar (Judicial) for further proceedings on 27<sup>th</sup> March, 2026.

**MINI PUSHKARNA  
(JUDGE)**

**FEBRUARY 25, 2026**  
Kr/Au/Ak/Sk